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ABSTRACT

The policy of granting American Indians preference for employment in Indian service facilities was established by Congress as long ago as 1834; in 1974 the Supreme Court ruled unanimously that Indian preference laws were not discriminatory or unconstitutional. However, a 1973 survey found that while 51 percent of the employees at Indian Health Service (IHS) headquarters were Indian, only 17 percent of the positions at level GS-13 or above were filled by Indians; no Indians were in key decision making positions. Both the IHS and other federal agencies which administer Indian services should immediately and vigorously begin implementing Indian employment preferences. Indian preference should also be enforced on contracts and grants let by any federal agency for the benefit of Indians. An Indian Career Service commission should be established to oversee implementation of Indian preference; federal agencies should publicize preference guidelines and actively recruit Indian people; education and training opportunities must be made more readily available to Indians and Alaska natives. All these steps should serve to permit an orderly transition from federal domination of programs and services to attractive and meaningful participation by Indian people in the planning, conduct, and administration of those programs and services. (Author/DS)

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NATIONAL INDIAN HEALTH BOARD

POSITION

ON

INDIAN PREFERENCE

Adopted by the
National Indian Health Board
at a Special Meeting held in
Billings, Montana on
August 17, 1978

RC 010789

INTRODUCTION

The policy of granting American Indians preference for employment in Indian service facilities was established by Congress as long ago as 1834. The Act of June 30, 1834 states: "In all cases of the appointments of interpreters or other persons employed for the benefit of the Indians, a preference shall be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties."

Over the next 15 years, Congress confirmed this policy in four separate acts--all of which set down specific employee categories such as clerks, mechanics, farmers, etc. In 1934, Congress passed the Indian Reorganization Act (25 U.S.C. 472) which is the most comprehensive and mandatory statute on Indian Preference to date. The Act states in part: "The Secretary of the Interior is directed to establish standards for health, age, character, experience, knowledge and ability for Indians who may be appointed, without regard to Civil Service Laws, to the various positions maintained, now or hereafter by the Indian office, in the Administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions." (emphasis added)

Five years later, an executive order issued by President Roosevelt further defined congressional policy be exempting "positions in the Bureau of Indian Affairs, Washington, D.C., and in the field, when filled by the appointment of Indians who are 1/4 or more Indian blood".

When the Division of Indian Health, Bureau of Indian Affairs transferred from Interior to Health, Education and Welfare in 1955, the transfer law contained no policy change in Indian Preference. Furthermore, Health, Education and Welfare pledged to "agressively pursue" career development and training for Indians. Enforcement of these laws requiring Indian preference was limited until a series of court decisions beginning in 1972. In that year, the case of Freeman v. Morton challenged the limited application of preference laws. The federal district court ruled that Indian Preference was absolute and was to be applied to any vacancy in the Bureau of Indian Affairs. This decision was upheld by the Federal Court of Appeals in 1974.

Also in 1974, the Supreme Court decided unanimously in Morton v. Mancari that Indian Preference laws are not discriminatory or unconstitutional. Although the Supreme Court's decision in the Mancari case was a final and thorough clarification and confirmation of the Federal Government's historic policy in favor of Indian Preference, subsequent implementation of that policy has not always come easy. Indian Health Service did not apply Indian Preference to all vacancies and allowed exceptions to be made in Indian Preference. However, as a result of a suit filed in 1977 (Tyndall v. U.S.A. et.al.) the Indian Health

Service has agreed to adopt Absolute Indian Preference as its official policy.

Principle I - Indian Preference should be immediately and aggressively applied in filling vacancies within the Indian Health Service

This principle should apply regardless of how such a vacancy arises including initial hiring, reassignment. Lateral transfer, or promotion. Particular emphasis should be given to making sure that Indians are placed in significant high level Indian Health Service positions. The overwhelming majority of Indian employees of the Indian Health Service are found in low GS levels. A 1973 survey found that while 51% of the employees at Indian Health Service Headquarters are Indians, only 17% of the positions at level GS-13 or above were filled by Indians. Furthermore, no Indians were in key decision making positions. Saturating the lowest levels of the bureaucracy with Indians will not enable Indians to gain control or to effectively impact the management of Indian Health Service in the interests of their own people. The National Indian Health Board (NIHB) finds this situation deplorable and calls for the immediate and aggressive implementation of Indian Preference for vacancies arising at all levels in the Indian Health Service. Furthermore, to ensure that enforcement of Indian Preference regulations is meaningful, penalities should be formulated and imposed upon violators of these regulations.

Principle II - An Indian Career Service Commission should be established to oversee the implmentation of Indian Preference,

as mandated by Section 12 of the Indian Reorganization Act

A Commission should be established to oversee Indian Preference matters at any federal agency which administers programs or services for the benefit of Indians. The Commission should be made up of American Indians and Alaska Natives from various tribes throughout the country. This Commission could serve the following important functions:

(1) Develop Indian Career Service standards that take into account the life, knowledge, and skill of Indians "obtained outside of the standards of formal education" as well as other practical requirements necessary to fill various positions.

(2) Monitor the enforcement of Indian Preference, particularly at high level positions.

(3) Allow flexibility in the filling of vacancies which occur in Indian Health Service area offices. The Commission would allow the preference of local tribes to be taken into account in filling vacancies outside of Indian Health Service Headquarters. The Commission however should not be allowed to circumvent Indian Preference laws.

(4) Assist Indian tribes in developing merit personnel systems as mentioned in Section 104 of the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638).

Principle III - The Indian Health Service should adopt a more

equitable definition of Indian for purposes of preference eligibility.

The current criteria for defining who is eligible for Indian employee preference by IHS is divided into five categories. Three of these categories contain no reference to the amount of Indian blood (blood quantum) a person must have to qualify for employment preference, but merely limit eligibility to members of any recognized tribe under federal jurisdiction or descendants of such members who were residing within the present boundaries of any Indian reservation on June 1, 1934. Basing eligibility solely on the basis of tribal membership or descendancy places those tribes with a minimum blood quantum criteria for membership at a great disadvantage with regard to the tribes which have no minimum blood quantum criteria. Furthermore, it allows a person of, for example, 1/256th Indian blood who was born and raised in New York City but who is a member of a tribe with no Indian blood requirement to be accorded employment preference over a full blood reservation Indian.

In light of the fact that inequities result between tribes because of defining preference eligibility based on varying membership standards, the National Indian Health Board calls for new preference eligibility standards which require a minimum of 1/4 degree Indian blood for all categories of employment preference eligibility.

Principle IV - IHS should widely publicize its preference guidelines and make them known to Indians throughout the country.

Current IHS guidelines are contained in IHS Circular No. 77-2 which many participants at the Second National/Alaska Native Health Conference held in February 1978 indicated they had never seen. The best drafted Indian Preference guidelines will have little impact if Indian people are not made aware of them. The NIHB calls for IHS

to publish its employment guidelines in the Federal Register and to take whatever steps are necessary to ensure that Indian and Alaska Natives throughout the country are made aware of these guidelines.

Principle V - Training and education opportunities should be made more readily available to Indian and Alaska Native people.

IHS Circular No. 77-2 states that "the Indian Health Service will provide absolute preference without exception to qualified Indian applicants..." (emphasis added). Obviously, the best way to give Indians greater participation in their own self government, which is the major purpose of Indian Preference, is to ensure that there is an adequate number of qualified Indians to assume key decision making positions. The NIHB therefore believes that training and educational opportunities should be made more readily available to Indian people. More university classes should be brought to reservations and Indian communities to upgrade academic skills. IHS should allow employees time off periodically to participate in training programs.

Principle VI - Indian Preference should be immediately and agressively enforced in contracts entered into by authority of P.L. 93-638, the Indian Self-Determination and Education Assistance Act of 1975.

Section 7(b) of the Indian Self-Determination and Education Assistance Act of 1975 requires, to the greatest extent feasible, preference be given to Indians for training, employment, subcontracting and subgranting in any contracts or grants with Indian tribes or tribal organizations or which are for the benefit of Indians. This provision should be immediately enforced and continually monitored. Furthermore, penalties should be provided for violation of this section

of the act to facilitate enforcement of Indian Preference.

Conclusion - The Indian Health Service and other federal agencies which administer Indian services should immediately and vigorously begin implementing Indian employment preference. Indian Preference should also be vigorously enforced on contracts and grants for the benefit of Indians let by any federal agency. In order to facilitate Indian Preference, IHS and other federal agencies should widely publicize its preference guidelines and should actively recruit Indian people to fill vacancies. Finally education and training opportunities must be made more readily available to Indian and Alaska Native people in order to "permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services".